



KCB

MYKASH

Terms and
Conditions

**MyKash Mobile
Banking Service**

The relationship between KCB Bank Kenya Limited (KCB) and the Merchant is governed by the Laws of Kenya and the following terms and conditions.

1. Definitions

1.1 The following words shall have the following meanings in this Agreement:

1.1.1 "Agreement" means this document (the terms and conditions), the Operational Documents and Regulations and any other appendices hereto;

1.1.2 "Application Form" means the application form completed by the Merchant requesting to access and use the KCB Mobile Banking Service;

1.1.3 "Business Day" means, with the exception of public holidays,:

i. On any day falling between Monday to Friday the period between 08.00 Hours to 18.00 Hours (all inclusive); and

ii. On Saturdays, the period between 09.00 Hours to 13.00 Hours (all inclusive).

Business Days shall be construed accordingly;

1.1.4 "Collection Account" means the Merchant's KCB account designated in the Application Form as the account into which KCB will credit or debit cash in settlement of a Transaction;

1.1.5 "Confidential Information" means, without limitation, all information, software, data, manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets, and other information of value to a Party and not generally known, (whether or not designated as "confidential information" by any Party and whether written, oral or in electronic form) and any other information clearly designated by a Party as "confidential

information" or that is evidently confidential by its nature or the nature of its disclosure, and includes the terms of this Agreement;

1.1.6 "Customer" means any person who performs a Transaction by instructing KCB to debit its Customer Account and credit the Collection Account ;

1.1.7 "Customer Account" means the Customer's KCB account designated on the KCB Mobile Banking Service by the Customer to complete a particular Transaction or Transactions;

1.1.8 "KCB Mobile Banking Service" means the digital payment services provided by KCB through which KCB facilitates Transactions in accordance with this Agreement.

1.1.9 "Business number" means the business code(s) allocated to the Merchant for the purpose of receiving payments from Customers and connecting Merchants to the KCB Mobile Banking Service through the KCB Network;

1.1.10 "KCB Network" means KCB's banking network including but not restricted to the KCB Mobile Banking Service

1.1.11 "Merchant" means any person doing business in Kenya who allows Customers to pay for goods or services through the KCB Mobile Banking Service;

1.1.12 "KCB Mobi System and Super App" means the systems operated by KCB for provision of the KCB Mobile Banking Services including but not restricted to the KCB Network;

1.1.13 "KCB Mobile Banking User" means either the Merchant or the Customer or any other person authorised by the Merchant or the Customer to access and use the KCB Mobile Banking Service;

1.1.14 "Operational Documents and Regulations" means the procedures and regulations, set out by KCB for purposes of operating the KCB Mobile Banking Service as amended or revised by KCB from time to time;

1.1.15 "Service Fees" means the fees payable by the Merchant and the Customer to KCB for using the KCB Mobile Banking Service.

1.1.16 "Transaction" means any movement of cash from the Customer to the Merchant or from the Merchant to the Customer pursuant to instructions initiated on the KCB Mobile Banking Service and includes reversals and transfer of funds from the Collection Account to the Customer Account;

1.1.17 In this Agreement (including the recitals), unless the context otherwise requires:

1.1.17.1 Words denoting the singular shall include the plural and vice versa and reference to the masculine gender shall include a reference to the feminine gender and neuter and vice versa;

1.1.17.2 References to clauses are references to the clauses of this Agreement;

1.1.17.3 References to "Parties" shall mean the parties to this Agreement being KCB and the Merchant and to "Party" shall mean either of them as the context may indicate;

1.1.17.4 The expression "person" includes a natural person, body corporate, unincorporated venture, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm; and

1.1.17.5 Headings to clauses are used for convenience only and shall not affect the construction and interpretation of this Agreement.

2. Introduction

- 2.1 KCB will provide to the Merchant the KCB Mobile Banking Service as explicitly set out in this Agreement.

3. Duration of the Agreement

- 3.1 This Agreement will commence on the date when KCB activates the Merchant on the KCB Mobile Banking Service and will continue until terminated by either Party in accordance with the provisions of this Agreement.

4. Activation of The KCB Mobile Banking Service

- 4.1 KCB shall activate the KCB Mobile Banking Service for the Merchant upon completion of applicable due diligence including but not restricted to Know Your Customer (KYC) due diligence.
- 4.1.1 For the avoidance of doubt, KCB's refusal to activate the KCB Mobile Banking Service for the Merchant shall neither confer on the Merchant any right to contest KCB's decision nor give rise to any legal claim against KCB.

5. The KCB Mobile Banking Service

- 5.1 The KCB Mobile Banking Service shall consist of different stages as fully described below:
- 5.1.1 The Merchant shall by registration authorize KCB to collect on its behalf payments through the KCB Business Number (s) mapped to the Collection Account;
- 5.1.2 Payments made by Customers shall be credited to the Collection Account.
- 5.1.3 KCB shall allow the Merchant to make regular withdrawals from the Collection Account;
- 5.1.4 KCB shall provide reports and statements to the Merchant through any of its interfaces to ensure that the Merchant can reconcile payments received, settlements done and withdrawals made;

- 5.1.5 KCB shall investigate and resolve any complaints and requests received from the Merchant and Customers;

6. The Parties shall:

- 6.1 In addition to this Agreement, comply with such other Agreement(s) between the Parties relating to products which are delivered via or utilise the KCB Mobile Banking Service;
- 6.2 Comply with all applicable laws.

7. The Merchant shall:

- 7.1 Inform the Customer that he will receive a text message emanating from KCB Mobile Banking Service to confirm that funds have been debited from the Customer's Account in payment of the applicable goods or services. The Merchant will be informed via a preferable banking channel of the credit into the Collection Account;
- 7.2 Inform KCB in writing within five (5) Business Days from the date when the Merchant receives the account crediting information if the Merchant notices any discrepancies between reports and/or statements received and the funds credited into or withdrawn from the Collection Account;
- 7.3 Use its best endeavours to operate the KCB Mobile Banking Service within its organization in the manner determined by KCB from time to time and in accordance with this Agreement including the Operational Documents and the Regulations;
- 7.4 Manage the KCB Mobile Banking Service and associated risks through appropriate internal controls as stipulated in the Operational Document and Regulations;
- 7.5 Immediately inform KCB in writing, of all assigned and changed role allocations within its organization;
- 7.6 Indemnify KCB against all actions, claims, damages, penalties, costs and expenses arising directly or indirectly from the Merchant's breach of this Agreement and/or non-compliance with any law, whether Kenyan, foreign or international.
- 7.7 Indemnify and defend KCB against, and pay any final judgment awarded against KCB, resulting from third party claims arising from the use of the KCB Mobile Banking Service leading to loss or damage (including consequential loss or damage) where the proximate cause of such loss or damage is attributable to the Merchant's negligence, recklessness, indifference, delay or failure to receipt or acknowledge a Customer's payment or respond to any Customer complaint after the Customer has effected a payment Transaction to the Merchant on the KCB Mobile Banking Service.
- 7.8 Supply all data and information when requested by KCB and ensure that all such data, information and instructions are in the specified format and medium and are correct in every sense;
- 7.9 The Merchant acknowledges that it will not be able to cancel any instruction or Transaction given or done once such instruction or Transaction has been processed;
- 7.10 The Merchant undertakes to procure full compliance with this Agreement including the Operational Documents and Regulations and will be liable for the negligent acts of its employees, servants and agents and/or their breach of this Agreement.

8. KCB shall:

- 8.1 Not be liable for any losses suffered by the Merchant, Customers or any other person unless caused directly by the negligent or unlawful act or omission of KCB or any of its employees, servants and agents;
- 8.2 Use all reasonable endeavours to ensure that the KCB Mobile Banking Service is functioning in accordance with the Operational Documents and Regulations.
- 8.3 Process all instructions, including payments, collections and transfers, by the action date in accordance with the Operational Documents and Regulations;

8.4 Reject instructions including Transactions, payments, collections and transfers that are incorrect, incomplete, or not in accordance with the Operational Documents and Regulations, or inconsistent with any arrangement between the Merchant and KCB;

8.5 Use its best endeavours to ensure that all information available through use of the KCB KCB Mobile Banking Service is correct;

8.6 In its absolute discretion and without incurring any liability, refuse to implement any instruction for any reason and notify the Merchant of its decision to do so.

9. Reversals

9.1 The Merchant shall within a reasonable period (but in any event no later than 72 hours) initiate and complete reversal transactions where a payment made to it is manifestly made in error.

9.2 Where the Merchant fails to initiate and complete the reversal in accordance with this clause in the event of a manifest error, then the Merchant hereby consents to KCB to initiate and complete the reversal. At all times KCB shall only make the reversal having due regard to the circumstances of the erroneous payment.

9.3 Where a dispute in relation to a reversal arises, KCB may suspend the Merchant's KCB Mobile Banking Service to facilitate an amicable resolution of the dispute.

10. Transaction Limits and Fees

10.1 The KCB Mobile Banking Service shall be subject to the minimum/maximum Transaction values appointed by KCB from time to time. KCB may by notice from time to time vary the charges and minimum/maximum transaction values. The minimum transaction values are accessible in the Operational Documents and Regulations and online at www.kcbbankgroup.com.

10.2 The Merchant shall pay KCB Transaction Fees and debited from

the Collection Account or any other account held by the Merchant in KCB.

10.3 KCB reserves the right to adjust the Transaction Fees from time to time. KCB shall give the Merchant at least thirty (30) days' advance notice before effecting any changes to the Transaction Fees.

11. Taxes

11.1 The Merchant shall solely determine, collect, remit and declare all taxes and income resulting from or in consequence of using the KCB Mobile Banking Service to the relevant tax authority and to pay all taxes levies and fees due on such income. KCB shall not be liable to the Merchant for any failure by the Merchant to comply with its obligations under this clause and the Merchant shall indemnify KCB from any loss or damage arising from any failure to comply with its obligations under this clause.

11.2 Each Party shall bear and be responsible for its own taxes, charges, impositions or levies imposed by law.

12. Prohibited Usage and Conduct

12.1 The Merchant agrees to not use the KCB Mobile Banking Service to:

12.1.1 Conduct anything that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable or criminal;

12.1.2 Impersonate any person or entity, including, but not limited to, a KCB official, fellow user, or falsely utter or otherwise misrepresent its affiliation with any person or entity;

12.1.3 Forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the KCB Mobile Banking Service;

12.1.4 Conduct anything that makes available any content or information that the Merchant does not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

12.1.5 Conduct any activity that infringes any intellectual property rights;

12.1.6 Conduct any activity whether solicited or unsolicited, relating to or remotely connected to SPAM, junk mail, pyramid schemes, pornography, unlicensed gaming or gambling or any other form of solicitation;

12.1.7 Conduct any activity that makes available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

12.1.8 Conduct any business that interferes with or disrupts the KCB Mobile Banking Service or servers or Networks connected to the KCB Mobile Banking Service, or disobeys any requirements, procedures, policies or regulations of networks connected to the KCB Mobile Banking Service;

12.1.9 Conduct any business that intentionally or unintentionally violates any applicable local, foreign or international law or regulation;

12.1.10 Collect or store personal data about other users without their express authority; or

12.1.11 Aggregate payments or create 'collection accounts' on behalf of third party persons without KCB's written consent.

13. Nature of Relationship

The relationship between KCB and the Merchant shall be that of independent contractor and KCB shall not be a principal, agent, partner or representative of the Merchant and shall not be liable for any acts or omissions of the Merchant.

14. Warranties and Indemnities

14.1 KCB warrants that:

- 14.1.1 It will deliver the KCB Mobile Banking Service in accordance with the standards set forth in this Agreement;
- 14.1.2 It has the requisite skills, expertise and resources to perform its obligations under this Agreement.

14.2 The Merchant warrants that:

- 14.2.1 S/he or none of its senior officers or directors (i) has ever been convicted of any crime (other than minor traffic offences); and (ii) has ever been charged of any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances anywhere in the world. The Merchant shall notify KCB in writing within twenty four (24) hours after any of these representations and warranties ceases to be true.
- 14.2.2 It has obtained all the necessary approvals (whether internal or regulatory) to use the KCB Mobile Banking Service.

15. Confidentiality

- 15.1 Each Party warrants that it will treat in confidence all Confidential Information which it acquires as a result of the operation of this Agreement and to afford it the same protection afforded to its own Confidential Information.
- 15.2 Neither Party will reveal any Confidential Information to any third party (including public statements) without the written consent of the

disclosing Party, except where such information is already in the public domain, has been legally acquired by the third party, or where disclosure of the confidential information is ordered by a court or other competent authority.

- 15.3 KCB may disclose the Merchant's Confidential Information if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with regulatory requirements (b) legal process; (c) enforce the terms of this Agreement; (d) respond to claims that the Merchant's use of the KCB Mobile Banking Service violates the rights of third-parties; or (e) protect the rights, property, or personal safety of KCB, its customers and the public. Where such information is required for any of the purposes above, the Merchant shall provide such assistance as may be reasonably required by KCB to ensure compliance.

16. Force Majeure

The failure by any Party to perform due to circumstances not reasonably within its control, including, without limitations, acts of God, civil commotion, riots, fire, governmental embargoes ("force majeure"), shall not be regarded as breach and the non-performing Party shall not be liable for any delay or loss or damage arising therefrom, provided that performance is resumed as soon as is reasonably possible and provided that written notice of such event shall be given within forty eight (48) hours by the affected Party.

17. Breach

Should any Party ("the defaulting Party") commit a breach of any provision of this Agreement and fail to remedy such breach within fourteen (14) days of receiving a written notice from the other Party ("the aggrieved Party") requiring the defaulting Party to do so, the aggrieved Party shall be entitled in addition to its other remedies in law or in terms of this Agreement to cancel this Agreement forthwith and without prejudice to its rights to claim damages.

18. Suspension

KCB may, with reasonable notice where practicable, suspend the availability of the KCB Mobile Banking Service to the Merchant wholly or partially for any reason, including without limitation, where (i) The Merchant fails to comply with any laws, rules or regulations in Kenya, any foreign country or international law regarding the KCB Mobile Banking Service; (ii) The Merchant fails to observe any term or obligation set out herein; or (iii) the Merchant carries on prohibited activities using the KCB Mobile Banking Service as set out in this Agreement including the Operational Documents and Regulations.

19. Termination

- 19.1 Either Party may terminate this Agreement by issuing to the other one (1) calendar month's written notice.
- 19.2 KCB may, acting reasonably, suspend all or any part of the KCB Mobile Banking Service without incurring liability to the Merchant.
- 19.3 Notwithstanding anything to the contrary contained herein, either Party shall be entitled to terminate this Agreement immediately if the other Party:
 - 19.3.1 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory or under judicial management in either case whether provisionally or finally; or
 - 19.3.2 takes steps to deregister itself or is deregistered;
 - 19.3.3 commits an act which would, in the opinion of KCB, constitute an act of insolvency; or
- 19.4 Termination of this Agreement will not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

20. Limitation of Liability

- 20.1 Notwithstanding anything to the contrary contained in this Agreement, except to the extent attributable to the negligence or

misconduct of KCB or its employees KCB shall not be liable to the Merchant or any other person for any loss or damage that the Merchant or other person may suffer in connection with the KCB Mobile Banking Service in the following circumstances:

- 20.1.1 For any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill;
- 20.1.2 Where it directly or indirectly results from any errors or omissions in or delay, breakdown or interruption in or improper operations of or inaccuracies in the operation of the KCB Mobile Banking Service nor for any loss of use howsoever caused;
- 20.1.3 Where the Merchant's or Customer's hardware, software or internet or mobile telephone provider's service is dysfunctional;
- 20.1.4 Where it directly or indirectly results from any loss, damage or destruction caused to the Merchant's hardware, software or any other data processing system;
- 20.1.5 In case of any breach of confidentiality resulting directly or indirectly from the Merchant's use of the KCB Mobile Banking Service;
- 20.1.6 Where the Transaction amount sought by the customer is below the minimum or above the maximum limits as communicated by KCB from time to time;
- 20.1.7 Where the Customer has entered incorrect details and the payment is made to the wrong person;
- 20.1.8 If the Transaction is suspicious or fraudulent resulting in losses to a third party;
- 20.1.9 If the Transaction details received are incorrect;
- 20.1.10 Where the Merchant's receipt of funds is intercepted by legal process or other encumbrance restricting the Transaction;

- 20.1.11 Where unforeseen circumstances prevent the execution of a Transaction despite any reasonable precautions taken by KCB; or
- 20.1.12 Where it directly or indirectly results from any matter arising from causes beyond KCB's control.
- 20.2 Without prejudice to any other provisions of this Agreement, each Party undertakes to indemnify the other Party and keep the other Party indemnified on demand for and against all proceedings, costs, claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred arising out of or by reason of any infringement or alleged infringement of any intellectual property rights arising as a result of carrying out their obligations under this Agreement.

21. Governing Law

The Laws of Kenya shall govern this Agreement and the courts of Kenya shall have exclusive jurisdiction.

22. Dispute Resolution

The Parties shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Services.

If the dispute has not been settled amicably within fourteen (14) days from when the informal negotiations were commenced, either Party may elect to commence arbitration. The Parties shall agree on one arbitrator to settle the dispute. In default of such agreement, within fourteen (14) days of the notification of a dispute, upon the application of either Party, the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom shall appoint an arbitrator to settle the dispute.

23. Notices

- 23.1 Any notice to be given hereunder by any Party to the other may be effected either by personal delivery, in writing, to such Party's principal office or by registered post and

shall be addressed to the Parties at the addresses appearing in the Application Form, but each Party may change their address by written notice to the other immediately upon the occurrence of such change.

- 23.2 Notices delivered personally shall be deemed communicated as of actual receipt while any notice sent by post shall be deemed to have been delivered Seven (7) days after posting.

24. General

- 24.1 This Agreement the entire agreement between the Parties hereto.
- 24.2 This Agreement, including the Operational Documents and Regulations may be amended by KCB by way of bulletin, and notices. The Merchant acknowledges that such bulletin or notices shall be binding and shall have full legal force as if they were contained in this Agreement.
- 24.3 This Agreement may not be assigned by the Merchant, by operation of law or otherwise, without the prior written consent of KCB. KCB may assign any right or obligation under this Agreement without the prior written consent of the Merchant.
- 24.4 No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.
- 24.5 Any provision of this Agreement held by a court of competent jurisdiction or regulator to be contrary to any law shall be severed from the Agreement, but such severance shall not render the remaining provisions of this Agreement ineffective. The remaining provisions of this Agreement will remain in full force and effect.

24.6 The Parties shall comply with all legal requirements applicable to their role in effecting Transactions.

24.7 This Agreement may be signed in any number of counterparts, all of which shall constitute one and the same instrument.

24.8 This Agreement may be accepted electronically in accordance with the provisions of the Kenya Information and Communications Act or any other applicable law.

